**IN THE HIGH COURT OF BOMBAY AT GOA**

**COMPANY APPLICATION NO. 22 OF 2006**

Bharatiya Development
Finance Ltd. ... Applicant

Ms. Amira Razak, Advocate for the Applicant/Official Liquidator.

Mr. V. P. Thali, Advocate for the Respondent No.2.

**CORAM : N. A. BRITTO, J.**

**DATE : 28TH JULY, 2006.**

**ORAL ORDER**

Heard Ms. Amira Razak, the learned Counsel on behalf of the applicant/Official Liquidator and Mr. V. P. Thali, the learned Counsel on behalf of the respondent no.2 on application dated 6-4-2006, by which the applicant/O.L. seeks leave to summon Pradeep R. Harmalkar and Devanand Kudao, Ex-Directors of the Company in Liquidation, to support the claim of recovery made by the applicant/O.L. against the respondents in the sum of Rs.4,876/- with interest at the rate of 21.5%. The

issues in the claim application were framed on 1-8-2003 and the application under consideration came to be filed on 6-4-2006. The reasons for filing the application with delay have been set out in paras 4A onwards of the application. On behalf of the applicant/O.L. it is submitted that the application under consideration has been made under Section 477 of the Companies Act, 1956 and in support thereof reliance has been placed on the case of **Hiralal Kalyanmalji Seth and another** v. **The Gendalal Mills Ltd. and others**(AIR 1976 SC 910).

2. On the other hand, it has been submitted on behalf of respondent no.2 that such an application could not be made under Section 477 of the Companies Act, 1956 and in support of the submission reliance has been placed on the case of **Satish Churn Law** v. **H. K. Ganguly** (AIR 1962 SC 806).

3. It is really not necessary for me to enter the above controversy. Rule 6 of the Companies(Court) Rules, 1959 provides that save as provided by the Act or by these Rules, the practice and procedure of the Court and the provisions of the Code as far as applicable, shall apply to all proceedings under

the Act and these Rules. The Registrar may decline to accept any document which is presented otherwise in accordance than in accordance with these Rules and the practice of the Court. Rule 9 further provides that nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. O.16 C.P.C. deals with summoning and attending of witnesses and Sub-Rule(3) of Rule 1 thereof provides that the Court may, for reasons to be recorded, permit a party to call whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in Sub-Rule(1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. The size of the claim made on behalf of the Official Liquidator has already been taken note of and the reasons assigned for filing the application for delay have been set out by way of amendment in the application dated 6-4-2006. Considering the facts and circumstances of the case, I have no reason as to not to accept the cause shown. Consequently,

the application is granted.

S. O. - three weeks.

**N. A. BRITTO, J.**

**RD**